

## § 5.571

make an order greater or less than the given range appropriate. Orders for repeat offenders will ordinarily be greater than those specified.

TABLE 5.569—SUGGESTED RANGE OF AN APPROPRIATE ORDER

Type of offense	Range of order (in months)
Misconduct:	
Failure to obey master's/ship officer's order.	1-3.
Failure to comply with U.S. law or regulations.	1-3.
Possession of intoxicating liquor.	1-4.
Failure to obey master's written instruction.	2-4.
Improper performance of duties related to vessel safety.	2-5.
Failure to join vessel (required crew member).	2-6.
Violent acts against other persons (without injury).	2-6.
Failure to perform duties related to vessel safety.	3-6.
Theft .....	3-6.
Violent acts against other persons (injury).	4-Revocation.
Use, possession, or sale of dangerous drugs.	Revocation (Note: see § 5.59).
Negligence:	
Negligently performing duties related to vessel navigation.	2-6.
Negligently performing non-navigational duties related to vessel safety.	1-3.
Neglect of vessel navigation duties.	3-6.
Neglect of non-navigational safety related duties.	2-4.
Incompetence .....	The only proper order for a charge of incompetence found proved is revocation.
Violation of Regulation:	
Refusal to provide specimens for required chemical test..	12-24.
Dangerous drugs (46 U.S.C. 7704).	The only proper order for a charge under 46 U.S.C. 7704 found proved is revocation.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 86-067, 53 FR 47079, Nov. 21, 1989]

### § 5.571 Delivery of decision.

(a) Whenever possible, the Administrative Law Judge's decision is delivered in writing to the respondent or to the respondent's authorized representative at the final hearing session. If it is not possible for the Administrative Law Judge to deliver a complete written decision at the final session of the hearing, an oral decision is rendered on the record, with a written order pre-

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pared and served on the respondent or the respondent's authorized representative. The decision, including the order, is effective upon service of the written order.

(b) If a complete written decision is not delivered at the final hearing session, the Administrative Law Judge prepares and has served on the respondent or the respondent's authorized representative a complete written decision within 30 days, when possible, after completion of the hearing. This delivery may be by personal service or certified mail, return receipt requested. The signed acknowledgment of personal service or the return receipt becomes a part of the hearing record.

(c) As used in this section, the phrase, *authorized representative* means any person who has been authorized by the respondent, as shown by the hearing record, to receive service and take an appeal on behalf of the respondent.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985; 50 FR 35228, Aug. 30, 1985]

### § 5.573 Notification of right to appeal.

The respondent is advised by the Administrative Law Judge of the right to appeal in accordance with subpart J of this part.

### § 5.577 Modification of Administrative Law Judge's decision and order.

(a) After an Administrative Law Judge renders the decision and order, it may be modified or changed pursuant to procedures set forth in paragraph (b) of this section, in subpart I of this part for reopening of hearings; in subpart J of this part for appeals; or in subpart K of this part for review of Administrative Law Judge's decision by the Commandant. In the absence of any such actions, the decision of the Administrative Law Judge is final.

(b) When the proceeding is based on a conviction for a dangerous drug law violation, rescission of the order affecting the license, certificate or document will not be granted, unless the applicant submits a specific court order to the effect that the conviction has been unconditionally set aside for all purposes. An order of revocation will not be rescinded as the result of any law which provides for a subsequent conditional setting aside, modification or

expungement of the court conviction in the nature of granting of clemency or other relief after the conviction has become final, without regard to whether punishment was imposed.

### Subpart I—Reopening of Hearings

#### § 5.601 Petition to reopen hearing.

(a) A respondent may petition to reopen the hearing on the basis of newly discovered evidence or on the basis of being unable to present evidence due to the respondent's inability to appear at the hearing through no fault of the respondent and due to circumstances beyond the respondent's control.

(b) The filing of a petition does not stay an existing order of the Administrative Law Judge. However, if filed within 30 days after the effective date of the Administrative Law Judge's decision, it will toll or defer the running of the 30-day statutory period of appeal as provided in subpart J of this part until the Administrative Law Judge has acted on the petition.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985; 50 FR 35228, Aug. 30, 1985]

#### § 5.603 Procedures for submitting petition.

(a) The procedures for submitting a petition based on newly discovered evidence are as follows:

(1) A petition to reopen the hearing may be submitted at any time prior to a final decision on appeal or within one year of the effective date of the Administrative Law Judge's decision.

(2) If an appeal to the Commandant from the Administrative Law Judge's decision has not been filed, the petition must be addressed to the Administrative Law Judge. If an appeal to the Commandant has been filed, the petition must be submitted to the Commandant.

(3) The petition must be in letter form, typewritten or written legibly, and shall contain:

(i) The name of the petitioner, the number and description of the license, certificate and/or document involved, nature of the charge, the decision rendered including the order, and the name of the Administrative Law Judge who heard the case;

(ii) A statement setting forth a description of the newly discovered evidence; and

(iii) A statement as to whether or not this additional evidence was known to the petitioner at the time of the hearing, and reasons why the petitioner, with due diligence, could not have discovered such new evidence prior to the completion of the hearing.

(b) The procedures for submitting a petition on the basis of inability to appear at the hearing are as follows:

(1) A petition to reopen the hearing may be submitted within 30 days of the effective date of the Administrative Law Judge's decision.

(2) If an appeal to the Commandant from the Administrative Law Judge's decision has not been filed, the petition must be addressed to the Administrative Law Judge. If an appeal to the Commandant has been filed, the petition must be submitted to the Commandant.

(3) The petition must be in letter form, typewritten or written legibly, and shall contain:

(i) The name of the petitioner, the number and description of the license, certificate and/or document involved, nature of the charge, the decision rendered including the order, and the name of the Administrative Law Judge who heard the case;

(ii) A statement setting forth a description of the evidence the petitioner would have offered at the hearing; and

(iii) A statement as to why the petitioner was unable to appear at the hearing including why the petitioner did not seek a change in the time or place for opening of the hearing.

#### § 5.605 Action on petition.

(a) The Administrative Law Judge, or Commandant, as appropriate, forwards a copy of the petition to the investigating officer. The investigating officer is afforded a reasonable time within which to submit written comments as to the merits of the petition.

(b) The Administrative Law Judge, or the Commandant, renders a decision either granting or denying the petition. The decision on the petition will be based on a consideration of the petition, the record of the hearing, and the